

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, APRIL 21, 2009

6 P.M. SPECIAL COUNCIL MEETING (Closed Session)

Conference with Labor Negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organization: Sunnyvale Managers Association (SMA)

7 P.M. COUNCIL MEETING

CALL TO ORDER

SALUTE TO THE FLAG

Mayor Spitaleri led salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean J. Chu

ABSENT:

None

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Finance Mary Bradley
Planning Officer Trudi Ryan
Interim City Clerk Katherine Bradshaw Chappellear

SPECIAL ORDER OF THE DAY – National Volunteer Recognition Week

SPECIAL ORDER OF THE DAY – Earth Day Proclamation

SPECIAL ORDER OF THE DAY – Recognition of Sunnyvale Green Businesses

SPECIAL ORDER OF THE DAY – Proclamation Recognizing National Crime Victims' Rights Week

**Approved as amended by Council on May 5, 2009.*

CLOSED SESSION REPORT FOR APRIL 21, 2009

Conference with Labor Negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organization: Sunnyvale Managers Association (SMA)

Vice Mayor Moylan reported the closed session was not concluded; therefore no direction given and no action taken. The closed session will reconvene immediately following the Council meeting.

PUBLIC ANNOUNCEMENTS

Councilmember Hamilton announced Earth Day Community Conversation on Climate Change, Wednesday, April 22, 2009, 6:30 p.m., City Hall Council Chambers. Event is registered with ICLEI's National Conversation on Climate Change at www.climateconversation.org. For more information call Dustin Clark, Environmental Sustainability Coordinator, (408) 730-2783 and RSVP by e-mail to dclark@ci.sunnyvale.ca.us.

Councilmember Hamilton announced Caltrain is seeking community volunteers for their Citizens Advisory Committee (CAC). CAC is comprised of nine volunteers who provide input on needs of current and potential rail customers. Applicants must be a resident of San Francisco, San Mateo, or Santa Clara County and the application deadline is 5 p.m., May 11. For more information, visit www.caltrain.com or call 650-508-6223.

Vice Mayor Moylan announced a ribbon cutting event for Borregas Ave. Bicycle and Pedestrian Bridge (Borregas Ave. and Moffett Park Dr.) at 10:30 a.m., April 22, 2009.

CONSENT CALENDAR

Councilmember Chu removed Item 1.A. from the Consent Calendar for the purpose of comment.

MOTION: Vice Mayor Moylan moved and Councilmember Whittum seconded to approve the Consent Calendar including Item 1.B. as amended and with the exception of Item 1.A.

VOTE: 7-0

1.A. Approval of Council Meeting Minutes of February 24, 2009

Councilmember Chu noted comments he made on Item No.4 regarding the Valley Transportation Authority (VTA) express toll lanes on Highways 85, 237 and 101 stands corrected. Councilmember Chu explained after looking at the Metropolitan Transportation Commission's (MTC) 25-year budget he noticed an inclusion of express toll lanes on S.R. 237. For the record, Councilmember Chu indicated draft minutes were correct.

MOTION: Councilmember Chu moved and Councilmember Howe seconded to approve Item 1.A. as amended.

Public comments opened

No speakers

Public comments closed

VOTE: 7-0

- 1.B. **Approval of Council Meeting Minutes of March 3, 2009**
- 1.C. **Approval of Council Meeting Minutes of March 10, 2009**
- 1.D. **Approval of Information/Action Items – Council Directions to Staff**

Fiscal Items

- 1.E. **RTC 09-095 List of Claims and Bills Approved for Payment by the City Manager - List Nos. 448 and 449**

Staff Recommendation: Council reviews the attached lists of bills.

Contracts

- 1.F. **RTC 09-097 Authorization to Modify an Existing Contract for Chronic Toxicity Testing at the Water Pollution Control Plant (F0804-64)**

Staff Recommendation: Council authorizes modification of an existing contract with Pacific Eco-Risk, in substantially the same form as the attached draft change order, by increasing the not-to-exceed amount by \$43,400, from \$99,500 to \$142,900 for chronic toxicity testing.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None

PUBLIC COMMENTS

Curtis Black, President of Sunnyvale Manager's Association (SMA), submitted a petition letter for the 16 management positions they represent and requested Council action. Black stated they are a link between city manager's direction and field staff actions. Black noted Council approved raises for every regular and part-time employee, each department director and all other managers – leaving the managers of SMA behind. Black mentioned SMA responded to every request from the City and provided dozens of proposals for city review, yet the City repeatedly declined to discuss monetary items. SMA acknowledged future fiscal uncertainties, deleting 25 of their proposals and adding a unique proposal to discuss concessions anytime another employee group does so. Black respectfully requested Council direct administration to complete an equitable agreement with SMA providing parity for these managers and to join them to discuss proposed concessions.

Mark Bowers asked for Council assistance with the current contract negotiations with SMA and City administration. Bowers stated he been the solid waste program manager since 1990 and in that role faithfully implemented Council policy and initiatives and worked to turn the community's vision into reality. Bowers noted when Councilmember Howe recently listed accomplishments of the former city manager, and said he felt pride knowing the personal work efforts of his management colleagues were among those listed. However, Bowers expressed concern about the way SMA had been treated in recent months and years when they attempted to negotiate a Memorandum of Understanding (MOU). Bowers emphasized "attempted" because the City had not made any substantive response to SMA's proposals and refused to discuss any monetary issues. Bowers asked for parity with co-workers and subordinates, and SMA stated their willingness to consider concessions along with other employee groups. Bowers asked Council to express their concern on SMA's behalf and to encourage City administration to join SMA in good faith bargaining and creation of an equitable MOU recognizing the value these managers bring to the community.

Allen Recht presented documentation illustrating a raised sidewalk in front of his home. Recht asked the City to fix the raised portion creating a safer sidewalk and leveling it to his corresponding walkway. Recht mentioned Senior Public Works Leader Ron Gonsalves visited the site and sanded down the raised portion; however, although the sidewalk is more level, it is not level with his walkway.

Councilmember Chu verified with Recht the sidewalk could possibly be raised due to a tree on his property.

Eric Huang, a Sunnyvale resident – and reporter and program host for NTD TV – stated the non-profit television station is sponsoring the Shen Yun Performing Arts at the San Jose Center for the Performing Arts, May 15 – 17.

Anand Krishnamurthy informed Council about the IAHV Yogathon organized by the International Association for Human Values. The event includes a youth empowerment seminar to promote stress-free, violence-free schools. The event is scheduled for Saturday, March 30. For more information visit www.yogathon.iahv.org.

Dave Snow alerted Council of an issue between The Community Preschool of Sunnyvale and The Congregational Church of Sunnyvale. Snow recently discovered the church has deemed the preschool not to be within the mission of the church. Snow stated he brought this item before Council to ask for community support for this crucial element of early childhood.

Mayor Spitaleri stated that he has met with some folks from the school and announced this will affect approximately 260 children if the preschool is no longer there.

Arthur Schwartz outlined his actions for “green sustainability,” that reduced utility costs by 60 percent. Schwartz stated this was an example of how much money could be saved if households adopt “green alternatives”.

PUBLIC HEARINGS/GENERAL BUSINESS

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|-----------|---------------------------------|---|
| 2. | ORDINANCE
RTC 09-094 | 2009-0188 - Uncodified Zoning Ordinance - Time Extensions affecting the expiration and allowed extensions of various permits and legally established uses as permitted through Title 19, Zoning Code |
|-----------|---------------------------------|---|

Director of Public Works Hanson Hom presented the staff report.

Councilmember Swegles noted the Housing and Human Trust Committee voted unanimously for the State to endorse a similar program.

Councilmember Howe asked about the Moffett Park Development Reserve and how many projects were in the possible extension category and what would be the effect if they were not extended.

Director Hom noted current active Moffett Park projects are all vested with the exception of Juniper Networks campus where there is an additional one-million-plus square feet yet to be built. Director Hom stated Juniper’s seven-year project period expires in May 2009 and this ordinance would provide them an additional two years to finish their office campus.

Councilmember Howe asked about the current activity on the Juniper site.

Director Hom answered Juniper was leasing the site for temporary auto storage. However, they are discussing site improvements and discussed with the City the possibility of dedicating right-of-way on Innovation Way to vest their project.

Councilmember Howe stated he specifically asked the question to address status of Innovation Way in relation to the Onizuka Base.

Director Hom stated there had been discussions with Juniper Networks for three possible options: Juniper actually has alternative building permit plans in place with the City; maintain status of their permit to avoid having to re-apply as if it were a new application; and actual dedication of Innovation Way with the required right-of-way for the street frontage properties and commitment to install all associated street improvements.

Council Whittum asked if there were any fiscal impacts associated with this ordinance.

Director Hom noted that during the last two years 10 projects applied for extensions. With these economic times there might be an increase in projects applying for extensions. However, Director Hom expected there would be fewer approvals of entitlements.

Public hearing opened at 8:05 p.m.

Kerry Haywood, Executive Director of Moffett Park Business and Transportation Association, asked Council to support the uncodified zoning ordinance. Haywood explained many members of Moffett Park are committed to the City and have vested time and effort into expanding their organizations within Sunnyvale. She stated this ordinance would be a good faith effort to support the business community as much as the business community supports the City.

Troy Ward thanked Council for considering the item and stated he hoped it would pass. Ward said it adds a third dimension to Juniper Networks' pursuit of expanding their campus in a timely fashion.

Public hearing closed at 8:07 p.m.

MOTION: Councilmember Swegles moved and Councilmember Hamilton seconded to approve staff recommendation; Alternative No.1 – Council adopts the Uncodified Zoning Ordinance with the suggested time frame of April 1, 2009 through March 31, 2011.

VOTE: 7-0

**3. RESOLUTION Conduct Protest Hearing and Adoption of the Resolution of
RTC 09-089 Intention of the City of Sunnyvale to Levy an Annual Assessment for
the Downtown Sunnyvale Business Improvement District**

Councilmember Whittum recused himself stating he owns real property within 500 feet of the property being discussed.

Councilmember Whittum left the dais at 8:09 p.m.

Economic Development Manager Connie Verceles presented the staff report.

Councilmember Howe clarified with staff the City follows normal collection procedures to collect unpaid Business Improvement District (BID) fees.

Councilmember Howe asked City Attorney David Kahn if there were other collection options that would assist the BID.

City Attorney Kahn stated there were other alternatives similar to those for collection of other City fees. The first step is to request payment and if unable to collect the payment, the collection agency can refer the matter for the filing of a civil action. Generally there is a cost versus benefit analysis to determine if the cost of collection would be more than the amount to be collected.

Economic Development Manager Verceles interjected that normally BID fees are collected as part of the Business License Fee; however since Sunnyvale has a two-year business license it is difficult to collect the BID on a yearly basis.

Protest hearing opened at 8:16 p.m.

No protests received.

Protest hearing closed at 8:16 p.m.

Public hearing opened: 8:17 p.m.

No speakers

Public hearing closed: 8:17 p.m.

Joel Wyrick, Executive Director of the Business Improvement District, addressed status of their search for office space. They were originally considering the former Sunnyvale Chamber of Commerce site but the site was leased to a private organization. Wyrick planned on going back to Sand Hill properties to determine if there were any possibilities within close proximity. Wyrick outlined the complexities of their storage issue needs.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve staff recommendation: Alternative No.1 – Council adopts the Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment For the Downtown Sunnyvale Business Improvement District.

Councilmember Hamilton confirmed no protests were received.

VOTE: 6-0 (Councilmember Whittum recused)

Councilmember Whittum returned to the dais at 8:19 p.m.

4. RTC 09-093 Positions on State Ballot Measures for the May 2009 Election

Intergovernmental Relations Officer Yvette Blackford presented the staff report.

Councilmember Swegles verified the staff recommendation "Support" position is the same posture the League of California Cities took on all measures.

Councilmember Swegles noted if these ballot measures do not pass, the State budget deficit could increase from \$9 billion to \$35 billion dollars. Councilmember Swegles inquired about the protection the City would have if the Propositions fail and the State of California looks for other fund.

Director of Finance Mary Bradley affirmed the City is well protected in terms of sales tax and property tax, but did mention the State of California has the ability to borrow against the City's property tax once in ten years if the state pays back the loan with interest.

Councilmember Chu asked staff the specific background information for Propositions 1D and 1E.

Intergovernmental Relations Officer Blackford stated the intent of Proposition 63 in 2004 for Proposition 1E was to provide mental health services and noted the original authors of the proposition thought the language would combat the borrowing of funds generated from the proposition. Obviously there was a gap in the protection and now this measure is considering borrowing money from that fund.

Councilmember Chu questioned the revenue source of Proposition 63 and learned it was an income tax surcharge on the high tax bracket.

Councilmember Chu verified with Intergovernmental Relations Officer Blackford that Proposition 10, the tobacco tax, now funds health programs from children.

Councilmember Chu stated in both cases additional tax revenue was generated to fund those specific programs. Councilmember Chu inquired if the propositions proposed taking away general fund money or proposed borrowing from them.

Director Bradley clarified propositions are essentially redirecting unspent reserve money and then authorizing an annual amount to be diverted – Proposition 1D five years and Proposition 1E one year.

Public hearing opened at 8:27 p.m.

No speakers

Public hearing closed at 8:27 p.m.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve Alternative No. 2: Council adopts an alternative position of "No Support" for all the proposed state ballot measures:

- **Proposition 1A** Stabilizes State Budget. Reforms California Budget Process. Limits State Spending. Increases "Rainy Day" Budget Stabilization Fund;
- **Proposition 1B** Education Funding. Payment Plan;
- **Proposition 1C** Lottery Modernization Act;
- **Proposition 1D** Protects Children's Services Funding. Helps Balance State Budget;
- **Proposition 1E** Ensures Funding for Children's Mental Health Services. Helps Balance State Budget; and
- **Proposition 1F** Elected Officials' Salaries. Prevents Pay Increases During Budget Deficit Years.

Councilmember Hamilton stated the proposition doesn't address the structural deficit and basically redirects money and takes funds away from children. These propositions are packaged to appear that programs will receive lots of money; however, in fact the programs will not receive funding for a couple of years. Therefore creating huge hits to early-childhood development programs and taking away mental health funding. Councilmember Hamilton stated the State of California has serious cash flow issues and the borrowing digs us deeper into debt. Councilmember Hamilton suggested the legislators do their job and figure out the structural deficit rather than just shifting money.

Councilmember Hamilton questioned what would happen in 2012/13 if the economy doesn't rebound and we have already committed even more money.

Councilmember Howe stated if the motion did not pass he would abstain from voting on other motions because the residents do not need Council's help on how to vote.

Councilmember Swegles stated he would not support the motion because it is necessary to pass the propositions so the State of California would not be in a more difficult budget situation. Councilmember Swegles noted he did not enjoy seeing funding for the programs he supports reduced but if these propositions do not pass the State of California would look to the City for funding.

Vice Mayor Moylan opposed the motion and the concept that Council should not be making endorsements. Councilmember Moylan stated Councilmembers endorse their personal positions all the time and this is not telling people how to vote but suggesting this is an argument worth considering.

Vice Mayor Moylan explained the purpose for the staff recommendation "Support" position was so the State would be less likely to raid the City if these propositions pass.

Councilmember Whittum reiterated the remarks of Councilmember Howe and stated voters did not need Council to tell them how to fill out their ballots.

Councilmember Whittum stated he sees a system that is broken. There is a serious problem in Sacramento and the financial problems are just a symptom of the broken system.

Councilmember Chu stated Council should reveal why they support or oppose propositions that specifically affect the City.

Councilmember Chu opposed the motion stating Propositions 1D and Prop 1E have specific funding outside of the budget.

Councilmember Hamilton explained she opposed the staff recommendation because in the short term it looks very good for the State but mortgaging the future is the wrong thing to do and will affect the City on a much larger scale.

Mayor Spitaleri stated opposition to the motion because of his concern about adopting all the propositions at once and was not in favor of fixing the budget on the backs of children or the mentally ill. Mayor Spitaleri supported the development of a "rainy day fund".

Mayor Spitaleri suggested a future study issue to consider if Council should continue to collectively support or oppose various issues.

VOTE: 2-5 (Councilmembers Swegles, Whittum, and Chu, Vice Mayor Moylan and Mayor Spitaleri dissented)

Motion failed.

MOTION: Councilmember Chu moved and Councilmember Hamilton seconded to adopt an "Oppose" position for:

- **Proposition 1D** Protects Children's Services Funding. Helps Balance State Budget; and
- **Proposition 1E** Ensures Funding for Children's Mental Health Services. Helps Balance State Budget.

Councilmember Chu clarified he's taking an "Oppose" position just on Propositions 1D and 1E and did not want to treat all the propositions with a single action.

VOTE: 3-3-1 (Councilmembers Whittum and Swegles and Vice Mayor Moylan dissented, Councilmember Howe abstained)

Motion failed.

MOTION: Councilmember Whittum moved and Councilmember Howe seconded that Council not take a position on any of the proposed state ballot measures:

- **Proposition 1A** Stabilizes State Budget. Reforms California Budget Process. Limits State Spending. Increases "Rainy Day" Budget Stabilization Fund;
- **Proposition 1B** Education Funding. Payment Plan;
- **Proposition 1C** Lottery Modernization Act;
- **Proposition 1D** Protects Children's Services Funding. Helps Balance State Budget;
- **Proposition 1E** Ensures Funding for Children's Mental Health Services. Helps Balance State Budget; and
- **Proposition 1F** Elected Officials' Salaries. Prevents Pay Increases During Budget Deficit Years.

Councilmember Whittum agreed with Mayor Spitaleri that there was a distinction between an individual Councilmember endorsing an issue as opposed to Council collectively endorsing an issue.

Councilmember Moylan also agreed there is a distinction between the City taking a position versus a Councilmember making an endorsement. However, he questioned the argument that voters don't need an endorsement to tell them how to vote. If that were the case, then the only way to be consistent would be to make no public endorsements either as an individual or as a Councilmember.

Councilmember Swegles stated he would prefer Council take a "Neutral position" instead of a "No position".

VOTE: 5-2 (Vice Mayor Moylan and Councilmember Chu dissented)

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Swegles attended a Housing Trust meeting and noted the Housing Trust received \$237,000 from Housing and Urban Development (HUD) for affordable housing. Councilmember Swegles cited a resident who benefited from the Housing Trust monies and was Sunnyvale Below

Market Rate (BMR) recipient. The person gave great praise to both programs in allowing her and her husband reside in Sunnyvale.

Councilmember Swegles attended State Water Task Force meeting and discussed the state drought problems and how cities, counties, and the state are addressing the issue. The task force also discussed city growth, farmers' needs and storage as additional water problems that need to be addressed.

While in Sacramento, Councilmember Swegles mentioned meetings with State Senators and Assembly Members to discuss local issues.

Councilmember Swegles also noted he attended a Boy Scout breakfast and the scouts asked for Council's continued support.

Councilmember Whittum reported the Water Emergency Transportation Authority (WETA) is discussing ferry service to the South Bay. Councilmember Whittum added San Jose Councilmember Kansen Chu, Water Board Representative Dick Santos and County Supervisor Dave Cortese were interested in ferry service to Alviso. Councilmember Whittum also announced the public comment period for the Emergency Water Transportation System Management Plan extends from April 2 to May 18, 2009.

Councilmember Chu commented on Valley Transportation Authority (VTA) activities and stated they are facing a budget deficit of \$50 million this year and \$100 million next year due to sales tax shortfalls and the state's redirection of funds. Councilmember Chu announced a workshop on Friday, April 24, 2009, on how VTA plans to reduce the budget shortfall including potential route reductions and fare increases.

Councilmember Chu also announced the Metropolitan Transportation Commission (MTC) will be approving their \$218 billion 25-year transportation plan on April 22, 2009.

City Manager Gary Luebbers noted Sunnyvale's NOVA is a nationally prominent and recognized organization. City Manager Luebbers thanked retiring Director of Employment Development Mike Curran for his service to the City and welcomed incoming Director Kris Stadelman.

Councilmember Howe thanked Director Curran for his excellent work with the City and the surrounding community. On a more personal level Councilmember Howe greatly appreciated Director Curran's guidance and the help he's given to Councilmember Howe and his family.

Mayor Spitaleri reiterated the gratitude for Director Curran's work and looked forward to working with the new Director Stadelman.

Councilmember Swegles asked City Manager Luebbers if it were possible to move the CDBG funding item from Tuesday, May 5, 2009 Council meeting to another scheduled Council meeting.

NON-AGENDA ITEMS & COMMENTS

- Council Councilmember Whittum announced a \$2,500 scholarship offered by the National League of Cities (NLC), for elected and appointed officials. Councilmember Whittum mentioned the opportunity for the Leadership Training Institute and distributed scholarship materials to staff and Council.

Councilmember Howe noted the deadline for Board and Commission applications was Friday, April 17 and requested staff to provide a list of all applicants for the various Boards and Commissions.

- Staff None

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of Board of Library Trustees Meeting of April 6, 2009
- RTC 09-096 Federal Stimulus Funding Update (Information Only)

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting at 8:55 p.m. and reconvened the Closed Session in the West Conference Room:

Conference with Labor Negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organization: Sunnyvale Managers Association (SMA)

Kathleen Franco Simmons
City Clerk

Date